

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33289

STATE OF IDAHO,)	2008 Unpublished Opinion No. 390
)	
Plaintiff-Respondent,)	Filed: March 6, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
GREGORY W. MONZO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Jeff M. Brudie, District Judge.

Order revoking probation, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ralph R. Blount, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Gregory W. Monzo appeals from the district court's order revoking his probation. He contends that his violations of probation were not willful and that his constitutional right to confront witnesses against him was violated at the revocation hearing. We affirm.

Monzo pleaded guilty to two counts of grand theft, Idaho Code §§ 18-2403(1), -2407(1)(b)(1), and one count of issuing an insufficient funds check, I.C. § 18-3106(b). Following a period of retained jurisdiction, the district court placed Monzo on probation. Two months later, a report of probation violation was filed, followed shortly thereafter by five additional allegations of probation violations. Following multiple hearings, the district court found Monzo in violation of several terms of his probation, revoked probation, and executed the underlying sentences. Monzo appeals.

Monzo first contends that his violations of probation were not willful because he was not properly informed of the terms of probation. *See generally State v. Lafferty*, 125 Idaho 378, 382-

83, 870 P.2d 1337, 1341-42 (Ct. App. 1994). The record shows otherwise. At the retained jurisdiction hearing in which the court granted probation, the court read each of the terms of probation verbatim into the record and Monzo was present and orally agreed to abide by those terms. The district court's subsequent written order also contained all of the terms of probation. Monzo testified at the probation revocation hearings that he did not know the terms of probation because he was not paying close attention when the district court read them to him, his attorney did not give him a copy of the order containing those terms, and his probation officer did not again review the terms of probation with him when supervision began.

The terms and conditions of probation must be contained in a written order granting probation. *Ex parte Medley*, 73 Idaho 474, 481, 253 P.2d 794, 798 (1953); *State v. Hancock*, 111 Idaho 835, 837, 727 P.2d 1263, 1265 (Ct. App. 1986). However, even if the terms of probation are not reduced to writing in the order of probation, no relief will lie if it is clear that the court orally informed the defendant of those terms. *Medley*, 73 Idaho at 481, 253 P.2d at 798. *See also State v. Russell*, 122 Idaho 515, 517-18, 835 P.2d 1326, 1328-29 (Ct. App. 1991). Here, the district court both explained the terms of probation to Monzo orally *and* issued a written order containing those same terms. If Monzo did not acquire a personal copy of the order, it is because his attorney, apparently, failed to give him one and because Monzo did nothing to obtain one. While it may have been preferable, as a prophylactic measure, for the probation officer to have again reviewed the terms of probation with Monzo and to have personally given him a copy of the order containing those terms, that was not essential, for the district court here did everything that was required. *Hancock*, 111 Idaho at 837, 727 P.2d at 1265. Monzo's claim of prejudice because of lack of notice of his terms of probation therefore is without merit.

Monzo next asserts that the district court erred by overruling his objection that introduction of hearsay evidence through the testimony of his probation officer violated his federal constitutional right to confront adverse witnesses. A probationer has a limited constitutional right, grounded in due process, to confront witnesses against him at a probation revocation hearing unless the trial court "specifically finds good cause for not allowing confrontation." *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973), quoting *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). *See also United States v. Comito*, 177 F.3d 1166, 1170 (9th Cir. 1999); *State v. Rose*, 144 Idaho 762, 171 P.3d 253 (2007); *State v. Farmer*, 131 Idaho 803, 806-07, 964 P.2d 670, 673-76 (Ct. App. 1998). However, contrary to Monzo's assumptions on

appeal, he did not raise a confrontation challenge to the probation officer's testimony at the hearing, but instead objected on the basis of hearsay and that "I think this is evidence that should come in directly from the witnesses involved."¹ Here, the district court had no reason to make a determination of "good cause" with respect to a confrontation challenge because it was not asked or prompted to do so by an objection on that basis. For the same reason, the State did not need to establish that good cause existed.

An objection to the admission of evidence on one basis does not preserve a separate and different basis for excluding the evidence. *State v. Sheahan*, 139 Idaho 267, 277, 77 P.3d 956, 966 (2003); *State v. Norton*, 134 Idaho 875, 880, 11 P.3d 494, 499 (Ct. App. 2000). Because Monzo never objected to the probation officer's hearsay testimony on the ground that his confrontation rights were being violated, and because he does not assert fundamental error in this appeal, we will not consider this issue on appeal.²

The district court's order revoking probation is affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**

¹ The hearsay objections were overruled in accordance with Idaho Rule of Evidence 101(e)(3) which provides that those rules do not apply to probation revocation hearings.

² Monzo's brief also does not address whether the hearsay evidence is "testimonial," as is necessary to implicate a constitutional right of confrontation. *See Rose*, 144 Idaho at 768, 171 P.3d at 259.